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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/156958

PRELIMINARY RECITALS

Pursuant to a petition filed April 18, 2014, under Wis. Admin. Code §DHS 10.55, to review a decision by the Milw Cty Dept Family Care - MCO in regard to Medical Assistance (MA), a telephonic hearing was held on June 5, 2014.

The issue for determination is whether the MCO correctly denied petitioner's request for home delivered meals (HDMs).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

█
█

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Cheryl Kloss, RN
Milw Cty Dept Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. She is MA eligible and enrolled in the Family Care Program (FCP).
2. Petitioner had been receiving HDMs in 2013 until she left the State of Wisconsin, at which time her FCP services were terminated. Petitioner was still enrolled in the FCP during that time and

for which she paid her cost share. When she returned to Wisconsin, her FCP services were reassessed. On March 5, 2014 the petitioner requested that the MCO begin providing twice weekly HDMs. See Exhibit 2.

3. The FCP Team completed a Resource Allocation Decision (RAD) on March 6, 2014 to assess the need for the HDMs. The RAD determined that it was more cost effective to include meal preparation through the Supportive Home Care (SHC) services petitioner receives.
4. On March 14, 2014 the FCP agency issued a notice to petitioner stating that it was denying her request for HDMs because the HDMs were not an effective way, nor needed, to support her outcomes, and that the HDMs were not the most cost effective way of supporting her outcomes. See Exhibit 1.
5. On March 24, 2014 the FCP team met with the petitioner in her home for her assessment regarding HDMs. The Case Manager determined at that time that petitioner was able to prepare her own meals.
6. Petitioner is 88 years old and is diagnosed with Renal Insufficiency/CKD-III, Obesity, Carpal tunnel, DJD, knee replacement/repair, osteoarthritis, bipolar disorder, chronic pain, Parkinsons, phlebitis, depression, hypertension, and glaucoma.

DISCUSSION

The Family Care Program (FCP), which is supervised by the Department of Health Services (DHS), is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10. The Managed Care Organization (MCO) must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. Code, §DHS 10.44(2)(f). The ISP must reasonably and effectively address all of the client's long-term needs and outcomes to assist the client to be as self-reliant and autonomous as possible, but nevertheless must be cost effective. While the client has input, the MCO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. Wis. Admin. Code, §DHS 10.44(2)(f); DHS booklet, Being a Full Partner in Family Care, page 9.

Wis. Stat. §46.287(2)(a)1 provides that a person may request a fair hearing to contest a list of negative actions under the FCP program directly to the Division of Hearings and Appeals. Failure to approve a requested new service is not in the list. However, the participant can file a grievance with the MCO over any decision, omission, or action of the MCO. The grievance committee shall review and attempt to resolve the dispute. If the dispute is not resolved to the participant's satisfaction, he may then request a hearing with the Division of Hearings and Appeals. That is what occurred here as the MCO Grievance and Appeal Committee upheld the denial of the HDMs.

The issue in this case is whether the MCO acted appropriately in denying petitioner's request. There are no standards written in the law or policy on how to make such a determination. Rather, it comes down to the general criteria for determining authorization for services – medical appropriateness and necessity, cost effectiveness, statutory and rule limitations, and effectiveness of the service. See Wis. Admin. Code, §DHS 107.02(3)(e).

The preponderance of the evidence in this case leads me to conclude that the HDMs were incorrectly denied in this case. First, the quality of the assessment for the HDMs is questionable. The testimony at hearing was that the assessment led the MCO to determine that the petitioner was capable of making her own meals and therefore the denial was made *only* on that basis. However, this assessment occurred *after* the notice of denial was issued stating that the HDMs were denied because the HDMs were not an effective way or needed to support her outcomes, and that the HDMs were not the most cost effective way of support her

outcomes. See Exhibit 1. Then the RAD, which also took place before the assessment, states that the SHC would be a more cost effective way than the HDMs to support her outcomes. See Exhibit 2.

I will address all of the denial reasons proffered for clarity. First, with respect to petitioner's ability to make her own meals, the direct testimony of petitioner was that she has a limited ability to make her own meals. The testimony about what was assessed for those abilities was not persuasive and contradicted by petitioner's testimony. She has limitations with opening cans and jars due to her tremors and arthritis. She further testified that between her depression, arthritis and bipolar disorder, that making the two meals per week that she is requesting here is overwhelming for her. I note that the agency states in its summary for this hearing that petitioner "receives help with cleaning and laundry, as member cannot complete these labor-intensive tasks in a timely manner without them overwhelming her." These services are provided by SHC. Also, while she prefers the SHC caregiver for SHC, she testified to the caregiver's lack of cooking skills and that the caregiver has burned her food resulting in a loss of food for petitioner. Petitioner has also offered to have her SHC hours cut (from 2 days/week to 3 days/week) as a means to save money for the FCP. She also goes to a water aerobics center where she receives meals after her aerobics twice weekly at \$3.50 per meal. Thus, she is asking for two additional HDMs weekly, which she spreads out over 4 days as a cost measure. Finally, I add that petitioner is on a salt-free diet and her testimony is that the HDMs have been able to meet her dietary restrictions and provide her well balanced nutrition. I find that these HDMs would support her long term outcome of needing assistance in maintaining her health, hygiene and household due to health issues.

Secondly, with respect to the cost effectiveness issue, I add that the information about that was unclear. The agency's summary for hearing states that the HDMs weekly cost was \$25.58 and that if the SHC provided the meal prep and cleanup twice weekly, the cost would be \$16. The Long Term Care Ombudsman appearing at hearing described being told that the SHC cost would be \$24 weekly and that was not refuted by the agency. Regardless of whether the difference is \$7.58 or \$1.58, I am persuaded by the agency's RAD policy which states that "Cost-effective means, "effectively supporting an identified long-term care outcome at a reasonable cost and effort." See OFCE Memo #13-02, available online at <http://www.dhs.wisconsin.gov/lcicare/Partners/infoseries/ta13-02.pdf>. Based on the foregoing, I find the twice weekly HDMs support petitioner's outcomes at a reasonable cost and effort.

CONCLUSIONS OF LAW

The MCO incorrectly denied petitioner's request for home delivered meals (HDMs).

THEREFORE, it is

ORDERED

That the petition for review be remanded to the MCO so that within 10 days from the date of this Order, it rescind its decision dated March 14, 2014 to deny petitioner two HDMs weekly and to begin providing the service. In all other respects, the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

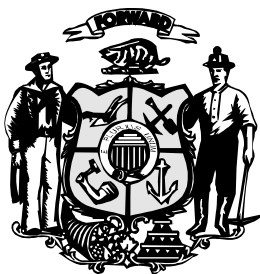
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of June, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 30, 2014.

Milw Cty Dept Family Care - MCO
Office of Family Care Expansion